

## § 34.15

## 22 CFR Ch. I (4–1–15 Edition)

support his or her position. If the employee objects to the percentage of disposable pay to be deducted from each check, the request should state the objection and the reasons for it.

(c) The employee must also specify whether an oral or paper hearing is requested. If an oral hearing is desired, the request should explain why the matter cannot be resolved by review of the documentary evidence alone.

(d) If the employee files a request for an outside hearing later than the required 30 calendar days as described in paragraph (a) of this section, STATE may accept the request if the employee can show that the delay was because of circumstances beyond his or her control or because of failure to receive notice of the filing deadline (unless the employee has actual notice of the filing deadline).

(e) An employee waives the right to an outside hearing and will have his or her pay offset if the employee fails to file a petition for a hearing as prescribed in paragraph (a) of this section.

### § 34.15 Outside hearings.

(a) If an employee timely files a request for an outside hearing under § 34.13(g)(2), pursuant to 5 U.S.C. 5514(a)(2), STATE shall select the time, date, and location of the hearing.

(b) Outside hearings shall be conducted by a hearing official not under the supervision or control of STATE.

(c) *Procedure.* (1) After the employee requests a hearing, the hearing official shall notify the employee of the form of the hearing to be provided. If the hearing will be oral, notice shall set forth the date, time and location of the hearing. If the hearing will be paper, the employee shall be notified that he or she should submit arguments in writing to the hearing official by a specified date after which the record shall be closed. This date shall give the employee reasonable time to submit documentation.

(2) *Oral hearing.* An employee who requests an oral hearing shall be provided an oral hearing if the hearing official determines that the matter cannot be resolved by review of documentary evidence alone (e.g., when an issue of credibility or veracity is involved). The hearing is not an adversarial adju-

dication, and need not take the form of an evidentiary hearing.

(3) *Paper hearing.* If the hearing official determines that an oral hearing is not necessary, he or she will make a decision based upon a review of the available written record.

(4) *Record.* The hearing official must maintain a summary record of any hearing provided by this subpart. Witnesses who provide testimony will do so under oath or affirmation.

(5) *Content of decision.* The written decision shall include:

(i) A statement of the facts presented to support the origin, nature, and amount of the debt;

(ii) The hearing official's findings, analysis, and conclusions; and

(iii) The terms of any repayment schedules, or the date salary offset will commence, if applicable.

(6) *Failure to appear.* In the absence of good cause shown (e.g., excused illness), an employee who fails to appear at a hearing shall be deemed, for the purpose of this subpart, to admit the existence and amount of the debt as described in the notice of intent. The hearing official shall schedule a new hearing date upon the request of the creditor agency representative when good cause is shown.

(d) A hearing official's decision is considered to be an official certification regarding the existence and amount of the debt for purposes of executing salary offset under 5 U.S.C. 5514 only. It does not supersede the finding by STATE that a debt is owed and does not affect the Government's ability to recoup the indebtedness through alternative collection methods under § 34.10.

### § 34.16 Procedures for salary offset.

Unless otherwise provided by statute or contract, the following procedures apply to salary offset:

(a) *Method.* Salary offset will be made by deduction at one or more officially established pay intervals from the current pay account of the employee without his or her consent.

(b) *Source.* The source of salary offset is current disposable pay.

(c) *Types of collection.* (1) Lump sum payment. Ordinarily debts will be collected by salary offset in one lump sum if possible. However, if the amount of

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the debt exceeds 15 percent of disposable pay for an officially established pay interval, the collection by salary offset must be made in installment deductions.

(2) *Installment deductions.* (i) The size of installment deductions must bear a reasonable relation to the size of the debt and the employee's ability to pay. If possible, the size of the deduction will be that necessary to liquidate the debt in no more than 1 year. However, the amount deducted for any period must not exceed 15 percent of the disposable pay from which the deduction is made, except as provided by other regulations or unless the employee has agreed in writing to a greater amount.

(ii) Installment payments of less than \$25 per pay period will be accepted only in the most unusual circumstances.

(iii) Installment deductions will be made over a period of not greater than the anticipated period of employment.

### § 34.17 Non-waiver of rights by payments.

So long as there are no statutory or contractual provisions to the contrary, no employee payment (of all or a portion of a debt) collected under this subpart will be interpreted as a waiver of any rights that the employee may have under 5 U.S.C. 5514.

## Subpart D—Collection Adjustments

### § 34.18 Waivers of indebtedness.

(a) Waivers of indebtedness may be granted only as provided for certain types of debt by specific statutes and according to the standards set out under those statutes.

(b) *Authorities*—(1) *Debts arising out of erroneous payments of pay and allowances.* 5 U.S.C. 5584 provides authority for waiving in whole or in part debts arising out of erroneous payments of pay and allowances, and travel, transportation and relocation expenses and allowances, if collection would be against equity and good conscience and not in the best interests of the United States.

(i) Waiver may not be granted if there exists in connection with the claim an indication of fraud, misrepresentation,

fault, or lack of good faith on the part of the employee or any other person having an interest in obtaining a waiver.

(ii) Fault is considered to exist if in light of the circumstances the employee knew or should have known through the exercise of due diligence that an error existed but failed to take corrective action. What an employee should have known is evaluated under a reasonable person standard. Employees are, however, expected to have a general understanding of the Federal pay system applicable to them.

(iii) An employee with notice that a payment may be erroneous is expected to make provisions for eventual repayment. Financial hardship is not a basis for granting a waiver for an employee who was on notice of an erroneous payment.

(iv) If the deciding official finds no indication of fraud, misrepresentation, fault, or lack of good faith on the part of the employee or any other person having an interest in obtaining a waiver of the claim, the employee is not automatically entitled to a waiver. Before a waiver can be granted, the deciding official must also determine that collection of the claim against an employee would be against equity and good conscience and not in the best interests of the United States. Factors to consider when determining if collection of a claim against an employee would be against equity and good conscience and not in the best interests of the United States include, but are not limited to:

(A) Whether collection of the claim would cause serious financial hardship to the employee from whom collection is sought.

(B) Whether, because of the erroneous payment, the employee either has relinquished a valuable right or changed positions for the worse, regardless of the employee's financial circumstances.

(C) The time elapsed between the erroneous payment and discovery of the error and notification of the employee;

(D) Whether failure to make restitution would result in unfair gain to the employee;